IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 5238 OF 2025

In the matter of:

An Application under Article 102 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of:

M/S Moushumi Traders, its Proprietor Md. Nazmul Hasan, son of Siraj Ullah Bhuiyan and others.

… Petitioners

-Versus-

Judge, Artha Rin Adalat No. 1, Dhaka and others.

… Respondents

Mr. A. K. M. Asiful Haque with
Ms. Sagorica Islam, Advocates

…For the petitioners

Mr. Md. Manirul Islam, Advocate

…For the respondent no. 3

Mr. Md. Shofiqul Islam, Advocate

…For the respondent no. 5

Heard on 20.08.2026 and 02.09.2026.
Judgment on 02.09.2026.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Rezaul Karim

Md. Mozibur Rahman Miah, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, by the defendants of Artha Rin Suit No. 82 of 2020 and that of the judgment-debtors of Artha Execution Case No. 125 of 2021, a Rule Nisi was issued calling upon the respondent nos. 1-3 to show cause as to why the ex parte adjudication order no. 06 dated 07.03.2021 passed by the learned Judge, Artha Rin Adalat No. 1, Dhaka under provision of section 6(4) of the Artha Rin Adalat Ain, 2003 without serving summons upon the defendants/petitioners and pursuant to the said *ex parte* adjudication decree drawn *ex parte* vide order no. 07 dated 14.03.2021 by way of insertion of the mortgaged property in the schedule of the said decree in violation of the provision of Form, Appendix-D of the 1st schedule of the Code of Civil Procedure (Annexure-'B' and 'B-1' to the writ petition) should not be declared to have been passed without lawful authority and is of no legal effect and also as to why entertainment and disposal of the Artha Execution Case No. 125 of 2021 of Artha Rin Adalat No. 1, Dhaka through insertion of mortgaged property of the petitioners vide order no. 1 dated 06.06.2021 and order no. 23 dated 13.03.2023 respectively (Annexure-'C' and 'D' to the writ petition) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of Artha Execution Case No. 125 of 2021 was also stayed for a period of 2(two) months which was subsequently extended from time to time.

The precise facts so described in the instant writ petition are:

The present respondent no. 3 as plaintiff originally filed the said Artha Rin Suit claiming an amount of taka 25,63,80,671/70. The suit was ultimately decreed *ex parte* vide judgment and decree dated 07.03.2021 though the decree was signed on 14.03.2021. In order to execute the said decree, the decree-holder-bank then initiated an execution case on 06.06.2021 being Artha Execution Case No. 125 of 2021 claiming an amount of taka 27,16,13,523/16 and the execution case was ended on issuing certificate vide order dated 13.03.2023.

It is at that stage, the defendants of the said Artha Rin Suit came before this court challenging the judgment and decree as well as order no. 1 dated 06.06.2021 and order no. 23 dated 13.03.2023 passed in the Artha Execution Case No. 125 of 2021 and obtained instant rule and order of stay as has been stated hereinabove.

Mr. A. K. M. Asiful Haque along with Ms. Sagorica Islam, learned counsels appearing for the petitioners upon taking us to writ petition and all the documents appended therewith at the very outset submits that since summons of the Artha Rin Suit has not duly been served upon the defendants of the suit so the judgment and decree passed by the learned Judge of the Artha Rin Adalat cannot be sustained in law.

By taking us to the order sheet so annexed with the writ petition as of Annexure-'B', the learned counsel also contends that though the summons was shown to have been served by publishing in the daily newspapers but those were not widely circulated papers and therefore, the summons served under section 7 of the Ain cannot be termed as a good service.

The learned counsel further contends that on the second date since filing of the suit, the bank simply filed application praying for publishing summons in the daily newspapers without taking into account that the summons which was issued through ordinary manner and postal service has ever returned and therefore, the judgment and decree passed *ex parte* can in no way be sustained.

The learned counsel by taking us to the decree of the Artha Rin Suit also contends that decree passed in the Artha Rin Suit as a money suit instead of suit for sale of mortgaged property and while drawing up the decree the court illegally inserted the mortgaged property in the decree which has been done without the sanction of section 34 read with Form Appendix-D of 1st schedule of the Code of Civil Procedure and therefore, the insertion of the said property in the execution case is also illegal and therefore, the initiation of the execution case vide order dated 06.06.2021 as well as the dispose of the same through issuance certificate under section 33(5) of the Artha Rin Adalat Ain, 2003 dated 13.03.2023 are also illegal and cannot be sustained.

However, in support of his such submission, the learned counsel placed his reliance in the decision reported in 63 DLR (AD) 99 and takes us through paragraph no. 15 as well as 9 ALR (AD) 81 and refers paragraph nos. 16 and 17 thereof and finally prays for making the rule absolute.

On the contrary, Mr. Md. Manirul Islam, learned counsel appearing for the respondent no. 3 by filing an affidavit-in-opposition and supplement affidavit-in-opposition very robustly opposes the contention taken by the learned counsel for the petitioners and at the very outset submits that the writ itself is not maintainable since the petitioners have got alternative efficacious remedy provided in sections 19 and 41 of the Artha Rin Adalat Ain, 2003.

Insofar as regards to grounds so couched in the writ petition, the learned counsel further contends that as per the provision provided in section 5(8) and section 5(11) of the said Ain where it has clearly been stipulated that the suit filed under the Ain will be registered as Artha Rin Suit (অর্থ ঋণ মামলা) where sub-section (11) also enshrines that Artha Rin Adalat (Court) will be treated as a civil court and the said Artha Rin Adalat will have all the powers and function as of civil court provided those are not inconsistent with any provision of Artha Rin Adalat Ain and since the Artha Rin Adalat Ain is special law then as per section 5(3) of the Ain, the decree passed in such an Artha Rin Suit will be termed as final decree so the contention advanced by the learned counsel for the petitioners in ground no. 1 is absolutely vague and devoid of any shred of substance.

The learned counsel also submits that section 34 of the Code of Civil Procedure will also not be applicable as how the interest will be counted in an Artha Rin Suit has clearly been set out in section 50 of the Artha Rin Adalat Ain which will prevail as per section 3 and 5(11) of the Ain and therefore, as per provision of section 26 of the Ain, the same will be followed to execute the decree passed in an Artha Rin Suit.

The learned counsel by referring to the provision of section 8(2)(kha) of the Artha Rin Adalat Ain further submits that since at the time of filing of the suit, the financial institution is obliged to give description of the property mortgaged with it, so certainly property mortgaged with this respondent has been included in the schedule of the execution case as well as to execute the decree to realize the decretal amount by selling the said property having no illegality in initiating the execution case having no illegality in it.

However, in support of his such submission, the learned counsel further contends that in the meantime, a plethora of decisions have already been passed by our Appellate Division on the point of maintainability of filing writ petition challenging the judgment and decree of an Artha Rin Suit for having alternative efficacious remedy in sections 19 and 41 of the Ain and therefore, writ itself is not at all maintainable.

The learned counsel by referring to the affidavit-in-opposition also contends that earlier these petitioners have filed as many as three writ petitions one being Writ Petition No. 3432 of 2023 where they have challenged the order no. 21 dated 20.02.2023 through which the bid offered by the auction purchaser in respect of ‘A’ scheduled property to the execution case had been acceptance and ultimately, rule of the said writ petition was discharged on an application filed by the bank for discharging the rule on 21.08.2023. Thereafter, the self-same petitioners was also filed writ petition being Writ Petition No. 12850 of 2023 challenging the inclusion of their name in the CIB report and the rule of that writ petition was also discharged on 28.10.2024 for non-prosecution. Again, these petitioners filed writ petition being no. 11306 of 2024 challenging the order nos. 21 and 23 through which the bid of the auction purchaser was accepted as well as certificate was issued under section 33(5) of the Ain and the rule of that very writ petition was also discharged for non-prosecution on 23.06.2025.

The learned counsel further contends that even challenging the order passed in Writ Petition No. 11306 of 2024, the present petitioners went to the Appellate Division by filing a Civil Petition For Leave To Appeal No. 1007 of 2025 and that very appeal was dismissed as being infructuous on 13.07.2025 but all those facts have clearly been suppressed in the instant writ petition which is tantamount to practice fraud upon the court and therefore, the instant writ is to be discharged for suppressing of material facts. Basing on those grounds, the learned counsel finally prays for discharging the rule.

On the other hand, Mr. Md. Shofiqul Islam, learned counsel appearing for the auction purchaser, added respondent no. 5 by filing affidavit-in-opposition also opposes the contention taken by the learned counsel for the petitioners and submits that since from the above 3(three) writ petitions were filed earlier by the petitioners, it clearly revels that the petitioners have got every knowledge about the judgment and decree passed *ex parte* so they ought to have filed a Miscellaneous Case under section 19 of the Artha Rin Adalat Ain, 2003 which is the only alternative efficacious remedy for the petitioners but without doing so, they have filed the instant writ petition which is not maintainable in law and finally prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned counsel for the petitioners and that of the learned counsels for the respondent nos. 3 and 5, perused the writ petition including the documents appended therewith, the affidavit-in-opposition, supplementary affidavit-in-opposition and that of the affidavit-in-opposition filed by the respondent no. 5.

In the instant writ petition, the petitioners literally challenged the propriety of judgment and decree passed *ex parte* in Artha Rin Suit only taking ground that the decree so passed in the Artha Rin Suit cannot be sustained on the count that since the decree passed as of money decree so the interest upon that decree will be imposed under section 34 of the Code of Civil Procedure. But on going through the provision provided in section 5(2)(3)(8) and (11) of the Artha Rin Adalat Ain, we find explicitly that the application of the Code of Civil Procedure has been given for a limited purpose and if there has been any inconsistency in the application of the Code of Civil Procedure while proceeding with Artha Rin Suit, the provision of Artha Rin Adalat Ain will prevail and that very proposition has clearly been set out in the last part of sub-section (2) of section 5 of the Artha Rin Adalat Ain where it runs as "উক্ত মামলাও এই আইনের অধীন প্রতিষ্ঠিত অর্থ ঋণ আদালতেই দায়ের করিতে হইবে; এবং এইরূপ ক্ষেত্রে The Code of Civil Procedure, 1908 এর বিধানসমূহ এই আইনের বিধানসমূহের সহিত, যতদূর সম্ভব, সমন্বয়ের মাধ্যমে প্রযোজ্য হইবে।". Then if we take a glance of section 5(8) of the Ain, we also find that a suit which has to be filed by a bank or financial institution under Artha Rin Adalat Ain, 2003 that suit will be registered as Artha Rin Suit when section 5(11) of the Ain has also very explicitly jotted down the power and jurisdiction of an Artha Rin Adalat and how Code of Civil Procedure will be applicable in the proceeding of an Artha Rin Suit vis-à-vis the modes of drawing up decree in such a suit so, the ground taken by the petitioners in sole ground no. 1 has got no manner of application in the facts and circumstances as well as the clear provision as set out in section 5(2)(3)(8) and (11) of the Artha Rin Adalat Ain.

It is the next contention of the learned counsel for the petitioners that the property mortgaged with the bank cannot be included in the execution case but the answer to it has clearly been laid down in section 8(2)(kha) of the Ain where it has been asserted "একটি তফসিল, যাহাতে, ঐ সকল স্থাবর ও অস্থাবর সম্পত্তি যাহা বন্ধক বা জামানত রাখিয়া বিবাদী কর্তৃক ঋণ গৃহীত হইয়াছে, উহাদের এবং সংশ্লিষ্ট বন্ধকী বা জামানতী দলিলের বিস্তারিত পরিচয়, বিবরণ, এবং আর্থিক মূল্যায়ন যদি হইয়া থাকে, প্রদর্শিত হইবে।". So under such clear provision, the decree-holder-bank has got no other option but to include the property in the schedule of an execution case which was mortgaged with the bank. So here also the submission placed by the learned counsel for the petitioners has got no leg to stand.

Then again, though no ground has ever taken in the entire writ petition with regard to non-service of summons upon the defendants yet on going through the order sheets as has been annexed with the writ petition as of Annexure-'B', we clearly find that on the first day of filing of the Artha Rin Suit dated 02.12.2020, the summons and notice was issued both in ordinary form as well as through registered post with acknowledgement due (AD) and since on the second day, that is, 05.01.2021, the summons was found to have returned unserved, then the learned Judge ordered to publish summons in the daily newspapers basing on the application to that effect by the bank and in that event provision of section 7 of the Ain has duly been complied with. From order no. 1 and order no. 2, we further find that near about one month had been passed when the second order was passed. Aside from that, from order no. 4, we also find that the learned Judge has clearly asserted that since 30 days has been passed from the issuance of the summons so that very summons will be regarded as duly served as per proviso to order V, rule 21A of the Code of Civil Procedure.

All in all, we find that the plaintiff-bank left no stone unturned to serve the summons upon the defendants. In spite of that the defendants as did not bother to appear in the suit then the learned Judge in the impugned judgment and decree has vividly described all those facts and passed the judgment and decree *ex parte*.

Curiously enough, in the four corners of the writ petition, we don't find when the petitioners came to learn about the impugned judgment and decree but from the affidavit-in-opposition filed by the respondent no. 3, we find from paragraph no. 15 (n), (o), (p), (q), (r) and (t) that beforehand, the petitioners have filed three separate writ petitions and in the instant writ petition apart from judgment and decree, the petitioners have challenged various orders passed by the executing court as has been stated hereinabove and even then they also filed a writ petition challenging the inclusion of their name in the CIB report and a Civil Petition For Leave To Appeal No. 1007 of 2025 before the Appellate Division. But the learned counsel has not controverted the said assertion by filing any counter-affidavit. So there has been no scope to find that the petitioners have got no knowledge about the impugned judgment and decree. And if that is the case, it is thus incumbent upon the petitioners to invoke the provision of section 19 of the Artha Rin Adalat Ain, 2003 as has been perfectly submitted by the learned counsel for the respondent no. 5 and since their knowledge accrued much earlier so there has been no scope to seek judicial review of this court under Article 102 of the Constitution so in a sense, the writ petition has been filed in an ill-motivated way only to halt realization of huge amount of public money.

In reply to the decision so have been cited by the learned counsel for the petitioners reported in 63 DLR (AD) 99, the respondent no. 3 by filing a supplementary affidavit has clearly rebutted the said decision contending that the said decision stemmed from an order passed in a Miscellaneous Case filed under section 19 of the Artha Rin Adalat Ain but the instant case, the petitioners having every knowledge about the judgment and decree as revealed from earlier writ petitions, has very intentionally filed the instant writ petition and obtained a rule and order of stay which has no application in the case in hand- we agree with such submission as well.

Furthermore, another decision so have been relied upon by the learned counsel for the petitioners reported in 9 ALR (AD) 81 and on careful examining of the same, we find that the *ratio* so have been settled in that very decision is not applicable in the facts and circumstances of the instant case.

Before parting, we have very carefully gone through the order so have been passed in the earlier writ petitions which has been asserted by the respondent no. 3 in its affidavit-in-opposition and on going through every judgments, we find that the self-same learned counsel had filed all the earlier writ petitions but concealing the said statement she filed the instant writ petition. So the submission placed by the learned counsel for the respondent no. 3 about suppression of fact has been proved which is aimed at to deliberately halt the further proceeding of the execution case and to realize the decretal dues by the respondent no. 3-bank as well as the right of the added respondent no. 5 to enjoy the property he purchased through a genuine auction sale. Thus, we are inclined to discharge the rule with a cost upon learned counsel for the petitioners.

Consequently, the rule is discharged with a token cost of taka 10,000/- (ten thousand) to be borne by the learned counsel for the petitioners and the very cost will be deposited to the respective section of the High Court Division within 15(fifteen) days from date in default, the concerned section is directed to take necessary step by bring it to the notice of the Registrar General of Bangladesh Supreme Court for realizing so as per relevant provision of Public Demands Recovery Act.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order be communicated to the court concerned forthwith.

Rezaul Karim, J.

I agree.

Abdul Kuddus, BO